

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

BRANDON NICHOLAS BARNETT,)
)
Plaintiff,)
)
v.) No. 1:19-cv-24-ACL
)
BRYAN GORHAM, et al.,)
)
Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court on the motion of plaintiff Brandon Nicholas Barnett, a prisoner, for leave to commence this civil action without prepayment of the required filing fee. Having reviewed the motion and the financial information submitted in support, the Court has determined to grant the motion, and assess an initial partial filing fee of \$1.00. *See* 28 U.S.C. § 1915(b)(1). Additionally, for the reasons discussed below, the Court will give plaintiff the opportunity to file an amended complaint.

28 U.S.C. § 1915(b)(1)

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action *in forma pauperis* is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these

monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10.00, until the filing fee is fully paid. *Id.*

After filing the instant motion, plaintiff filed a document stating he had tried unsuccessfully to obtain a copy of his certified inmate account statement. Therefore, the Court will require plaintiff to pay an initial partial filing fee of \$1.00, an amount that is reasonable based upon the information before the Court. *See Henderson v. Norris*, 129 F.3d 481, 484 (8th Cir. 1997) (when a prisoner is unable to provide the Court with a certified copy of his prison account statement, the Court should assess an amount "that is reasonable, based on whatever information the court has about the prisoner's finances."). Any claim that plaintiff is unable to pay this amount must be supported by a certified copy of plaintiff's inmate account statement.

Legal Standard on Initial Review

Under 28 U.S.C. § 1915(e)(2), the Court is required to dismiss a complaint filed *in forma pauperis* if it is frivolous, malicious, or fails to state a claim upon which relief may be granted. An action is frivolous if it "lacks an arguable basis in either law or fact." *Neitzke v. Williams*, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief may be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Determining whether a complaint states a plausible claim for relief is a context-specific task that requires the reviewing court to draw upon judicial experience and common sense. *Id.* at 679. The court must assume the veracity of well-pleaded facts, but need not accept as true "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Id.* at 678 (citing *Twombly*, 550 U.S. at 555).

This Court must liberally construe complaints filed by laypeople. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). This means that “if the essence of an allegation is discernible,” the court should “construe the complaint in a way that permits the layperson’s claim to be considered within the proper legal framework.” *Solomon v. Petray*, 795 F.3d 777, 787 (8th Cir. 2015) (quoting *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004)). However, even *pro se* complaints must allege facts which, if true, state a claim for relief as a matter of law. *Martin v. Aubuchon*, 623 F.2d 1282, 1286 (8th Cir. 1980). Federal courts are not required to assume facts that are not alleged, *Stone*, 364 F.3d at 914-15, nor are they required to interpret procedural rules so as to excuse mistakes by those who proceed without counsel. See *McNeil v. United States*, 508 U.S. 106, 113 (1993).

The Complaint

Plaintiff brings this action pursuant to 42 U.S.C. § 1983 against Case Managers Bryan Gorham and Susan Price, Functional Unit Manager Bruce Hanebrink, Assistant Wardens Alonna Wigfall and Lorene Armstrong, and Superintendent Jason Lewis. He indicates he sues Gorham and Price in their individual and official capacities, but does not indicate the capacity in which he sues the other defendants.

Plaintiff’s allegations are repetitive and vague. For example, he alleges that, from November 15, 2018 to January 18, 2019, he wrote over 20 letters in a month requesting an IRR (Informal Resolution Request), but was only given “2 in 2 months by him.” (Docket No. 1 at 4). Plaintiff states he was issued conduct violations “by him” and found guilty and referred to administrative segregation “by him.” *Id.* He states he wants cameras reviewed. He repeatedly alleges he wrote “over 20 letters” to other defendants he identifies by name, and alleges some form of wrongdoing concerning an IRR. He also states he was denied due process in connection

with conduct violation proceedings, he states his First, Eighth, and Fourteenth Amendment rights were violated, and he states the defendants violated policies of the Missouri Department of Corrections. Portions of the complaint are printed in handwriting that is very small and often illegible. Attached to the complaint are copies of statements from other inmates about force being used against plaintiff, and copies of Disciplinary Action Reports that are largely illegible.

Discussion

The complaint is subject to dismissal. It is unclear whether plaintiff intends to claim he was denied the right to file a grievance, or whether he intends to claim his grievances were wrongfully denied or mishandled. While plaintiff obviously intends to claim his due process rights were violated in connection with prison disciplinary proceedings, plaintiff fails to allege sufficient facts to state such a claim. Additionally, it is unclear why plaintiff included the statements from the other inmates. If plaintiff intends to bring claims of excessive force, his complaint must clearly allege the facts in support of such claims. Also, if plaintiff names more than one person as a defendant in this action, he should only include claims that are related to each other. *See Fed. R. Civ. P. 20(a)(2)*. Finally, plaintiff fails to allege sufficient facts showing how each named defendant was directly involved in or personally responsible for any incident that violated his federally-protected rights. *See Madewell v. Roberts*, 909 F.2d 1203, 1208 (8th Cir. 1990) (“Liability under § 1983 requires a causal link to, and direct responsibility for, the alleged deprivation of rights.”).

Because plaintiff is proceeding *pro se*, the Court will allow him to amend his complaint. Plaintiff is warned that the amended complaint will replace the original complaint. *E.g., In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 396 F.3d 922, 928 (8th Cir. 2005). Plaintiff must submit the amended complaint on a court-provided form, and he must comply with

the Federal Rules of Civil Procedure, including Rules 8 and 10. Rule 8 requires plaintiff to set forth a short and plain statement of the claim showing entitlement to relief, and it also requires that each averment be simple, concise and direct. Rule 10 requires plaintiff to state his claims in separately numbered paragraphs, each limited as far as practicable to a single set of circumstances.

In the “Caption” section of the amended complaint, plaintiff must state the first and last name, to the extent he knows it, of each defendant he wants to sue. Plaintiff should also indicate whether he intends to sue each defendant in his or her individual capacity, official capacity, or both.¹ Plaintiff should avoid naming anyone as a defendant unless that person is directly related to his claim.

In the “Statement of Claim” section, plaintiff should begin by writing the first defendant’s name. In separate, numbered paragraphs under that name, plaintiff should set forth the specific factual allegations supporting his claim or claims against that defendant. Plaintiff should only include claims that arise out of the same transaction or occurrence, or simply put, claims that are related to each other. See Fed. R. Civ. P. 20(a)(2). Alternatively, plaintiff may choose a single defendant, and set forth as many claims as he has against that defendant. See Fed. R. Civ. P. 18(a). Plaintiff should type, or very neatly print, the amended complaint.

If plaintiff is suing more than one defendant, he should proceed in the same manner with each one, separately writing each individual defendant’s name and, under that name, in numbered paragraphs, the factual allegations supporting his claim or claims against that defendant. Plaintiff’s failure to make specific factual allegations against any defendant will result in that defendant’s dismissal.

¹ The failure to sue a defendant in his or her individual capacity may result in the dismissal of that defendant.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed *in forma pauperis* (Docket No. 2) is **GRANTED**.

IT IS FURTHER ORDERED that, within thirty (30) days of the date of this Memorandum and Order, plaintiff must pay an initial filing fee of \$1.00. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison registration number; (3) this case number; and (4) the statement that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that, within thirty (30) days of the date of this Memorandum and Order, plaintiff shall file an amended complaint in accordance with the instructions set forth herein.

IT IS FURTHER ORDERED that the Clerk of Court shall mail to plaintiff a blank Prisoner Civil Rights Complaint form. Plaintiff may request additional forms as needed.

If plaintiff fails to timely comply with this Memorandum and Order, the Court will dismiss this action without prejudice and without further notice.

Dated this 11th day of April, 2019.



ABBIE CRITES-LEONI
UNITED STATES MAGISTRATE JUDGE